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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,014	08/26/2003	David Dennis Latham	16210-US	3470

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EXAMINER

UNDERWOOD, DONALD W

ART UNIT PAPER NUMBER

3652

DATE MAILED: 10/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/648,014

Applicant(s)

LATHAM ET AL.

Examiner

Donald Underwood

Art Unit

3652

*NU*

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08/26/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-13, 15, 16, 18-22, 24-28, and 30-33 is/are rejected.
- 7) ☒ Claim(s) 8, 14, 17, 23 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08/26/03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 082603.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**Detailed Action**

1. The drawing is objected to under 37 CFR 1.83(a) as failing to show and label a bell crank (claims 19 and 25) and a hole (claims 15, 21 and 33).
2. The specification is objected to as being unclear. It appears bell crank 83 in the specification should be lever 83 and hole 108a should be space 108a. See applicant's drawing. Clarification is required.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 19, 20, 21, 24-27 and 30-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 19 and 25, these claims set forth a bell crank, as does the specification; however, the drawing illustrates a straight lever. See applicant's figure 1, element 83. A bell crank is a lever formed by two arms forming a right angle with a fulcrum at the apex of the angle. Thus the claims may be inaccurate. Clarification is required.

Regarding claims 15, 21 and 33, these claims set forth a hole for supplying hydraulics and the specification sets forth a hole 108a. The drawing however illustrates a space not a hole. Clarification is required.

Regarding claims 24-27 and 30-33, these claims are improper method claims. Method claims should contain active steps, i.e., "ing" words. Moreover, structure in a

method claim is not given weight unless it affects the method in a manipulative sense.

Ex parte Pfeiffer 1962 C.D. 408(1961).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-6, 9-13, 15, 16, 18, 21, 22, 24, 27, 28, 30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Apgar et al or Abe et al.

Note elements 62, 64 in Apgar are synonymous with applicant's mast, 86 is a load bearing support and 92 is a pin support. While 92 and 86 in Apgar are welded together it would have been obvious to one having ordinary skill in the art to construct these pieces to be bolted instead of welded since both methods are well known and used interchangeably.

Note elements 23, 42 in Abe are synonymous with applicant's mast, 20 is a load bearing support and 41 is a pin support. While 20 and 41 appear to be welded together it would have been obvious to one having ordinary skill in the art to construct these structures to be bolted instead of welded for the reasons noted above.

Regarding claims 6, the pin support could be made by casing instead of welded parts. The method of manufacture of a part can not serve as a basis for patentability in an apparatus claim.

Art Unit: 3652

Regarding claim 15, applicant's claimed hole appears to be no more than a space and not an actual hole. Apgar's pin support contains a space like that shown by 198a in applicant's figure 3.

7. Claims 7, 19, 20, 21, 25, 26, 27, 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abe et al in view of Mandon.

It would have been obvious to use any conventional boom on the frame in Abe including one as taught by Mandon.

Regarding claims 19 and 26, lever 68 in Mandon is shaped like lever 83 in applicant's figure 2.

Regarding claims 21 and 27, the remarks regarding claim 15 in the preceding rejection are herein repeated.

8. Claims 8, 14, 17 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Gilstrap teaches interchanging fasteners. See column 2, lines 59-64.

10. Defrancq and Nakamura disclose using bolts to secure frame sections together.

11. Any inquiry concerning this communication should be directed to D. Underwood at telephone number (703) 308-1113.

Underwood/vs  
September 27, 2004

*Donald W. Underwood* 10/12/04  
DONALD W. UNDERWOOD  
PRIMARY EXAMINER